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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Jeremy A Harkin,

10 Plaintiff,

11 v.

12 Fitness International LLC,

13 Defendant.
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No. CV-17-00352-TUC-RM

ORDER

15 Pending before the Court is Defendant's Rule 12(b)(1) Partial Motion to Dismiss.
16 (Doc. 21.)¹ In the Motion, Defendant argues that the negligence claim asserted in
17 Plaintiff's First Amended Complaint ("FAC") (Doc. 11) should be dismissed for lack of
18 subject-matter jurisdiction. Plaintiff filed a Response (Doc. 26) in opposition to the
19 Partial Motion to Dismiss, and Defendant filed a Reply (Doc. 29).

20 **I. Allegations of Plaintiff's FAC**

21 Plaintiff's FAC asserts a claim for violation of the Americans with Disabilities Act
22 ("ADA"), 42 U.S.C. § 12181 *et seq.*, as well as a state-law negligence claim. (Doc. 11 at
23 1, 4-6.) Plaintiff alleges that this Court has original jurisdiction over the ADA claim

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25 ¹ On December 8, 2017, Defendant filed its Answer (Doc. 14) to Plaintiff's
26 FAC. Defendant then filed the pending Rule 12(b)(1) Partial Motion to Dismiss on
27 January 30, 2018. A motion asserting a lack of subject-matter jurisdiction under Rule
28 12(b)(1) "must be made before pleading if a responsive pleading is allowed." Fed. R.
Civ. P. 12(b). Defendant's pending Motion was filed after Defendant's responsive
pleading, in violation of Fed. R. Civ. P. 12(b). However, because "challenges to subject
matter jurisdiction may be raised at any point," *Herklotz v. Parkinson*, 848 F.3d 894, 897
(9th Cir. 2017), the Court will evaluate Defendant's pending Motion on the merits rather
than on timeliness grounds.

1 pursuant to 28 U.S.C. §§ 1331 and 1343, and supplemental jurisdiction over the
2 negligence claim pursuant to 28 U.S.C. § 1367. (Doc. 11 at 1.) The factual allegations of
3 Plaintiff's FAC are as follows:

4 Plaintiff is a qualified individual with a disability under the ADA, and Defendant
5 is a foreign LLC doing business in the District of Arizona as L.A. Fitness. (Doc. 11 at 2
6 ¶¶ 6, 8.)² As a result of childhood polio, Plaintiff has a severely deteriorated right side
7 requiring use of a full right-leg brace, and a weakened left leg. (*Id.* at 2 ¶ 9.)

8 On or about December 5, 2016, Plaintiff began visiting Defendant's L.A. Fitness
9 facility located at 240 South Wilmot Road in Tucson, Arizona. (*Id.* at 2 ¶ 11.) After an
10 introductory pass, Plaintiff joined L.A. Fitness as a member. (*Id.*) Defendant represented
11 to Plaintiff that Plaintiff would be able to access the pool and Jacuzzi at the L.A. Fitness
12 with electrical lifts. (*Id.* at 2 ¶ 12.) However, for most of the time from December 2016
13 to September 2017, the lifts were not fully operational and usable. (*Id.* at 2-4 ¶¶ 13, 15,
14 17, 24.)³ Plaintiff repeatedly informed Defendant about the inaccessibility of the pool
15 and Jacuzzi. (*Id.* at 2 ¶ 14.) As a result of the lifts' inoperability and/or inadequacies,
16 Plaintiff was injured multiple times. (*Id.* at 3-4 ¶¶ 16-22.) In addition to the problems
17 with the lifts, Plaintiff alleges three additional barriers to access: the path to the pool is
18 often wet and slippery, the main door to the L.A. Fitness lacks an automatic door opener,
19 and there are too few disabled parking spaces in close proximity to the L.A. Fitness's
20 entrance. (*Id.* at 4 ¶ 28.)

21 In his ADA claim, Plaintiff alleges that, due to barriers to access, Defendant has
22 discriminated against and continues to discriminate against Plaintiff by denying him full,
23 safe, and equal enjoyment of goods, services, facilities, privileges, advantages, and/or
24 accommodations at Defendant's L.A. Fitness. (*Id.* at 4-5.) In his state-law negligence

26 ² All record citations refer to the page numbers generated by the Court's
27 electronic filing system.

28 ³ Plaintiff's FAC indicates that Plaintiff has been able to safely use the pool
lift since September 2017, but that the Jacuzzi lift is still unreliable and unusable without
assistance. (Doc. 11 at 4 ¶¶ 23-24.)

1 claim, Plaintiff alleges that Defendant owed Plaintiff a duty of reasonable care, that the
2 inadequate lifts created a dangerous condition, that Defendant knew or should have
3 known of the inadequate lifts, and that Plaintiff was injured as a direct and proximate
4 result of Defendant's negligence. (*Id.* at 5-6.)

5 **II. Legal Standard**

6 "Federal courts are courts of limited jurisdiction. They possess only that power
7 authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511
8 U.S. 375, 377 (1994). In a civil action in which a district court has original jurisdiction,
9 the court generally also has "supplemental jurisdiction over all other claims that are so
10 related to the claims in the action within such original jurisdiction that they form part of
11 the same case or controversy under Article III of the United States Constitution." 28
12 U.S.C. § 1367(a). A state-law claim is part of the same case or controversy as a federal
13 claim if the claims share "a common nucleus of operative fact" and are such that a
14 plaintiff "would ordinarily be expected to try them all in one judicial proceeding."
15 *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966).

16 Supplemental jurisdiction "need not be exercised in every case in which it is found
17 to exist." *Id.* at 726. Because the justification for supplemental jurisdiction "lies in
18 considerations of judicial economy, convenience and fairness to litigants . . . a federal
19 court should hesitate to exercise" supplemental jurisdiction when these considerations are
20 not present. *Id.* A district court may decline to exercise supplemental jurisdiction over a
21 state-law claim if (1) the claim raises a novel or complex issue of state law; (2) the claim
22 substantially predominates over the claim(s) for which the court has original jurisdiction,
23 (3) the court "has dismissed all claims over for which it has original jurisdiction," or (4)
24 "in exceptional circumstances," if "there are other compelling reasons for declining
25 jurisdiction." 28 U.S.C. § 1367(c).

26 **III. Discussion**

27 There is no dispute that his Court has original jurisdiction over Plaintiff's ADA
28 claim. Defendant argues that this Court lacks supplemental jurisdiction over Plaintiff's

1 state-law negligence claim because the negligence claim does not share a common
2 nucleus of operative fact with the ADA claim. (Doc. 21 at 1.) In support of this
3 argument, Defendant notes that the “two claims have entirely different elements” and that
4 proving Plaintiff’s ADA claim would not automatically prove the negligence claim. (*See*
5 *id.* at 3.) However, the standard for determining whether supplemental jurisdiction exists
6 is not whether the federal and state claims share precisely the same elements; the standard
7 is whether the claims share “a common nucleus of operative fact” such that a plaintiff
8 “would ordinarily be expected to try them all in one judicial proceeding.” *United Mine*
9 *Workers*, 383 U.S. at 725.

10 Plaintiff’s ADA claim and his negligence claim are both premised on Defendant’s
11 alleged failure to provide safe, operable lifts for accessing the pool and Jacuzzi at the
12 L.A. Fitness facility located at 240 South Wilmot Road. The underlying factual
13 allegations are substantially the same for both claims, and a plaintiff would ordinarily
14 expect to try both claims in one judicial proceeding. Although the claims have different
15 elements, they nevertheless share a common nucleus of operative fact. Accordingly, the
16 Court finds that it has supplemental jurisdiction over Plaintiff’s state-law negligence
17 claim pursuant to 28 U.S.C. § 1367(a).

18 Although Defendant’s Motion cites 28 U.S.C. § 1367(c) (*see* Doc. 21 at 2),
19 Defendant does not argue that any of the provisions of § 1367(c) are applicable, and the
20 Court finds that they are not. Considerations of judicial economy, convenience, and
21 fairness support the exercise of supplemental jurisdiction in this case.

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Accordingly,

IT IS ORDERED that Defendant's Rule 12(b)(1) Partial Motion to Dismiss (Doc. 21) is **denied**.

Dated this 20th day of March, 2018.



Honorable Rosemary Márquez
United States District Judge